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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 96

JAMES MONROE JEFFERSON,

Appellant,

vs.

CHRONICLE PUBLISHING COMPANY, A CALIFORNIA CORPORATION,

JURISDICTIONAL STATEMENT

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INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
Statutes involved	2
Summary statement of the facts	5
Importance of the questions involved	8
Statutes and cases believed to sustain jurisdiction	9
Cases to sustain jurisdiction	10

Table of Cases Cited

Buchanan v. *Warley*, 245 U. S. 60, 62 L. Ed. 149	10
Hebert v. *Louisiana*, 272 U. S. 312, 71 L. Ed. 270	10
Missouri ex rel. Gaines v. *Canada*, 305 U. S. 337, 83 L. Ed. 208	10
Oyama v. *California*, 332 U. S. 633, 92 L. Ed. 249	10
Sipuel v. *Board of Regents of the University of Oklahoma*, 332 U. S. 631, 92 L. Ed. 247	10
Stromberg v. *California*, 283 U. S. 359, 75 L. Ed. 1117	10
Takahashi v. *Fish and Game Commissioner*, 334 U. S. 410, 92 L. Ed. 1478	10
Toomer v. *Witsell*, 334 U. S. 385, 92 L. Ed. 1460	10
Truax v. *Corrigan*, 257 U. S. 312, 66 L. Ed. 254	10
Truax v. *Raich*, 239 U. S. 33, 60 L. Ed. 131	10
United States v. *C. I. I.*, 92 L. Ed. 1315	10
Werner v. *Southern Calif., etc., Newspapers*, 35 Cal. (2d) 121, 19 U. S. Law Week 3074, 216 P. (2d) 825, 92 ACA 224, 206 P. (2d) 952	6, 7, 8
Yick Wo v. *Hopkins*, 118 U. S. 356, 30 L. Ed. 20	10

Statutes Cited

Civil Code of California, Sec. 48a (added by Stats. 1931, p. 2034; Am. Stats. 1945, ch. 1489, paragraph 5	2, 6, 9

	Page
Constitution of California, Article I, Sec. 1	4, 9
Article I, Sec. 9	4, 9
Article VI, Sec. 2	9
Constitution of the United States, 14th Amendment	
Constitution of the United States, 14th Amendment,	2, 5, 7, 8, 9
United States Code, Title 8, Section 42	10
Title 28, Sections 2101 and 2104	1

SUPREME COURT OF THE UNITED STATES

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JURISDICTIONAL STATEMENT

Pursuant to Rule 12, Rules of the Supreme Court of the United States, appellant sets forth his Jurisdictional Statement:

A

Jurisdiction is conferred by Title 28 U. S. Code, Sections 2101-2104.

The decision and judgment of the District Court of Appeal of the State of California, Second Appellate District, Division Three, was entered March 5, 1952 (the opinion of said District Court was filed January 4, 1952, and the order of the Supreme Court of the State of California denying a hearing was filed March 3, 1952). The petition for the

allowance of an appeal was filed within the 90 days provided by 28 U. S. C. 2101 (c).

B

Statutes Involved

Fourteenth Amendment to the Constitution of the United States:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 48a of the Civil Code of the State of California

1. In any action for damages for the publication of a libel in a newspaper, or of a slander by radio broadcast, plaintiff shall recover no more than special damages unless a correction be demanded and be not published or broadcast, as hereinafter provided. Plaintiff shall serve upon the publisher, at the place of publication or broadcaster at the place of broadcast, a written notice specifying the statements claimed to be libelous and demanding that the same be corrected. Said notice and demand must be served within 20 days after knowledge of the publication or broadcast of the statements claimed to be libelous.

2. If a correction be demanded within said period and be not published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as were the statements claimed to be libelous, in a regular issue thereof published or broadcast within three weeks after such service, plaintiff, if he pleads and proves such notice, demand and failure to correct, and if his cause of action be maintained, may

recover general, special and exemplary damages; provided that no exemplary damages may be recovered unless the plaintiff shall prove that defendant made the publication or broadcast with actual malice and then only in the discretion of the court or jury, and actual malice shall not be inferred or presumed from the publication or broadcast.

3. A correction published or broadcast in substantially as conspicuous a manner in said newspaper or on said broadcasting station as the statements claimed in the complaint to be libelous, prior to receipt of a demand therefor, shall be of the same force and effect as though such correction had been published or broadcast within three weeks after a demand therefor.

4. As used herein, the terms "general damages," "special damages," "exemplary damages" and "actual malice," are defined as follows:

(a) "General damages" are damages for loss of reputation, shame, mortification and hurt feelings;

(b) "Special damages" are all damages which plaintiff alleges and proves that he has suffered in respect to his property, business, trade, profession or occupation, including such amounts of money as the plaintiff alleges and proves he had expended as a result of the alleged libel, and no other;

(c) "Exemplary damages" are damages which may in the discretion of the court or jury be recovered in addition to the general and special damages for the sake of example and by way of punishing a defendant who has made the publication or broadcast with actual malice;

(d) "Actual malice" is that state of mind arising from hatred or ill will toward the plaintiff; provided, however, that such a state of mind occasioned by a good faith belief on the part of the defendant in the truth of the libelous publication or broadcast at the time it is published or broadcast shall not constitute actual malice. (Added by Stats. 1931, p. 2034; Am. Stats. 1945, ch. 1489, paragraph 5.)

Preamble to the Constitution of the United States:

"We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Article I, Section I, of the Constitution of the State of California:

"Inalienable Rights

Section 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness. (Constitution of 1849, Art. 1, Sec. 1.)"

Article 1, Section 9, of the Constitution of the State of California:

"Liberty of Speech and of the Press

Sec. 9. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid, for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the

place of trial shall be changed for good cause. (Constitution of 1849, Art. 1, Sec. 9, revised 1879.)"

Amendment Fourteen, Section 1, of the Constitution of our United States:

"Guarantee of Protection to all Citizens"

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C

Summary Statement of the Facts

This case involves the question of whether one's reputation is a property right which is entitled to protection under the provisions of the Fourteenth Amendment to the Constitution of the United States; it also involves the question of whether a newspaper publisher can be granted privileges and protection from liability for a knowingly false and malicious libel as an exception to the general liability of persons who publish a libel in any other manner, and whether such provision offends the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The only facts before the Court are as set out in the plaintiff's complaint. Plaintiff is engaged in the business of a public relations agent and his ability to secure employment is largely dependent upon his reputation. The defendant is a corporation which publishes a daily newspaper called the "Chronicle" in the City of San Francisco. This

paper on three occasions published an article in which this plaintiff was called a "loan shark". The designation was and is untrue and defendant knew it was false and defamatory; it was published with ill will and malice, with the intention, design and purpose to injure plaintiff's professional standing and reputation, to discredit and defame him and to bring him into public contempt and ridicule. Plaintiff asked for general and exemplary damages.

The defendant demurred to the complaint on the ground, among others, that the complaint did not show compliance with Section 48(a) of the Civil Code of California in that there was no allegation that plaintiff had demanded a retraction, and no allegation of special damages. At the hearing on the demurrer, counsel for plaintiff stated that plaintiff could not amend the complaint to show compliance with said section, but that he was relying on his contention that the section is unconstitutional. Thereupon the trial judge stated that the California Supreme Court had held the section valid and the demurrer was sustained without leave to amend. Thereafter, judgment was entered for the defendant. The order sustaining the demurrer and the judgment each specify the basis of the ruling to be plaintiff's failure to comply with Section 48(a).

Plaintiff took the position at all times that Section 48(a) of the Civil Code is violative of due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Plaintiff appealed and again urged and relied upon the unconstitutionality of Section 48(a) and the Appellate Court affirmed the decision of the trial court, saying, "Irrespective of our view as to the constitutionality of Section 48(a), we are bound to follow the decision of the Supreme Court in *Werner* v. *Southern Cal. etc. Newspapers*, 35 Cal. 2d 121. In the *Werner* case it was held that Section 48(a) is not invalid under either the due process clause or the

equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

Plaintiff and appellant then asked the Supreme Court of the State of California for a hearing and urged that Court to reconsider the determination reached in the *Werner* case. The majority of the Supreme Court denied a hearing, but Justice Schauer wrote a dissenting opinion, Justice Carter concurring, stating that he would grant a hearing and reconsider the question raised, and that, "The question was raised in *Werner* v. *Southern Calif. etc. Newspapers* (1950), 35 Cal. 2nd 121, but after an appeal to the United States Supreme Court was filed (19 U. S. Law Week 3074) and probable jurisdiction noted (19 U. S. Law Week, Nov. 14, 1950, Index P. 20) the cause was dismissed in the United States Supreme Court on motion of the plaintiff, presumptively for a consideration paid by the defendants."

The State of California, by its constitution and laws, gives every person the right to write and speak his mind freely, but makes him responsible for any abuse thereof. Section 48(a) creates an exception to that general rule as to anyone who commits a libel by publication in a newspaper, which is the most effective of all means of disseminating a libel. It is appellant's position that this is not a valid exception under the Fourteenth Amendment to the Constitution of the United States.

The California Legislature recognized that libel does cause injury for it made a provision requiring a retraction if it is demanded by the person libeled. Appellant contends that a retraction is not and cannot be an adequate and sufficient substitute or replacement for monetary damages. Furthermore, there is no justification for placing a burden on the injured person and making it his responsibility to demand a retraction. This procedure is contrary to the Fourteenth Amendment to the Constitution of the United States.

Appellant further contends that one's reputation is property, and that it has an actual and realistic value, monetary and otherwise, and that one is entitled to protection of such property under the Constitution of the United States. This being so, the State of California has no right to deprive appellant of his rights to secure compensation for injury to such property. Section 48(a) does that very thing and is therefore invalid and void under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

The decision of the District Court of Appeal in this case, as pointed out above, is predicated on the decision of the State Supreme Court in the case of *Werner* v. *Southern Cal. etc. Newspapers,* 35 Cal. (2) 121; 216 P. (2) 825, and the opinion in that case is to be included in the record so as to show the actual holding by the California courts.

D

Importance of the Questions Involved

The modern newspaper is the most effective and far reaching medium for the publication of a libel that the world has ever known. Is a libeler using that medium to be treated differently than libelers using other methods of written expression? It one libeled in a newspaper to be deprived of any monetary redress? Is a knowingly false and malicious libel to be privileged merely because it is published in a newspaper? Each of the foregoing questions is of paramount importance to every person, and to every newspaper, in the United States. The ultimate answers are to be found only in the Federal Constitution. The present case presents the issue directly, and it is important that this Court give the answers.

The District Court of Appeal of the State of California,

Second Appellate District, Division Two, in the *Werner* case, prior to the hearing in the State Supreme Court, held said section 48(a) to be unconstitutional (92 ACA 224; 206 P. 2 952). Justices Schauer and Carter have dissented each time that the question has been before the State Supreme Court, as they did in the petition for hearing in the present case. It thus appears there is a strong feeling among the judiciary of the State of California that the section is unconstitutional. Since the question is a federal one, it should be finally determine by the Supreme Court of the United States.

E

Statutes & Cases Believed to Sustain Jurisdiction

Section 48(a) of the Civil Code of California, as amended by Stats. 1945, ch. 1489, P. 2762;

Article I, Section 1, of the Constitution of the State of California;

Article I, Section 9, of the Constitution of the State of California;

Fourteenth Amendment to the Constitution of the United States;

Preamble to the Constitution of the United States;

Article VI, Section 2 of the Constitution of the United States, as follows:

> "*Supreme Law of the Land*
>
> 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Title 8, U. S. C. A., Section 42, as follows:

"Section 42. Property rights of citizens.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

* * * * * * *

Cases to Sustain Jurisdiction

Oyama v. *California,* 332 U. S. 633, 92 L. Ed. 249;

Takahashi v. *Fish & Game Commissioner,* 334 U. S. 410, 92 L. Ed. 1478;

Sipuel v. *Board of Regents of the University of Oklahoma,* 332 U. S. 631, 92 L. Ed. 247;

Missouri ex rel. Gaines v. *Canada,* 305 U. S. 337, 83 L. Ed. 208;

Toomer v. *Witsell,* 334 U. S. 385, 92 L. Ed. 1460, 1475, Headnote 17;

Yick Wo v. *Hopkins,* 118 U. S. 356, 30 L. Ed. 220;

Truax v. *Corrigan,* 257 U. S. 312, 66 L. Ed. 254;

Truax v. *Raich,* 239 U. S. 33, 60 L. Ed. 131;

Buchanan v. *Warley,* 245 U. S. 60, 62 L. Ed. 149;

Stromberg v. *California,* 283 U. S. 359, 75 L. Ed. 1117;

United States v. *C. I. I.,* 92 L. Ed. 1315;

Hebert v. *Louisiana,* 272 U. S. 312, 71 L. Ed. 270.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 96

JAMES MONROE JEFFERSON,
Appellant,

vs.

CHRONICLE PUBLISHING COMPANY, A CALIFORNIA CORPORATION

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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INDEX

Page

Subject Index

Statement opposing jurisdiction and motion to dismiss or affirm 1
Facts and proceedings below 1
Statute involved 2
Grounds for denying jurisdiction 3
The objective of the legislature is proper .. 5
The classification is reasonable 6
Summary 7

Table of Cases Cited

Allen v. *Pioneer Press*, 40 Minn. 117, 41 N. W. 936 ... 6
Bordens Farm Products Co. v. *Baldwin*, 293 U. S. 194 7
Clark v. *Paul Gray, Inc.*, 306 U. S. 583 7
Fearon v. *Treanor*, 301 U. S. 667 4
Hanfgarn v. *Mark*, 302 U. S. 641 4
Jefferson v. *Chronicle Publishing Co.*, 108 Advance Cal. Appellate Reports 634, 238 Pac. (2d) 1018, 38 Advance California Reports No. 18, page 1 1
Northern Pacific Ry. Co. v. *Meese*, 239 U. S. 614 4
Railway Express Agency v. *New York*, 336 U. S. 106 7
Ross v. *Gore*, — Fla. —, 48 Sou. (2d) 412 6
Silver v. *Silver*, 280 U. S. 117 4
Werner v. *Southern California Associated Newspapers*, 35 Cal. (2d) 12, 216 Pac. (2d) 825 5

Statutes Cited

Angoff "Handbook of Libel" 6
Arthur & Crossman "The Law of Newspapers" pp. 500-570 6
Civil Code of California, Section 48a 2, 3, 5
Florida Statutes Annotated, Section 770.02 6
Minnesota Statutes Annotated, Section 548.06 6
Prosser on Torts, p. 778 5
United States Code, Title 28, Section 1257 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 96

JAMES MONROE JEFFERSON,

Appellant,

vs.

CHRONICLE PUBLISHING COMPANY, A CALIFORNIA CORPORATION

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT OF JURISDICTION AND MOTION TO DISMISS OR AFFIRM

In opposition to appellant's statement as to jurisdiction herein and in support of motion to dismiss or affirm, appellee respectfully shows:

I. Facts and Proceedings Below

Governor Earl Warren of California, at a general press conference on legislative matters, characterized appellant as a "loan shark". Appellee reported this in its daily newspaper published in San Francisco. Thereafter appellant initiated action for libel in the Superior Court of Los Angeles County, the place of his residence. The complaint seeks damages in the amount of $600,000.00. No allegation

of injury to appellant in his business and profession (that of public relations agent) is made; the prayer is limited to general and exemplary damages as such elements of damage are defined in § 48a of the Civil Code of the State of California.

Appellee's demurrer to the complaint set forth two principal objections: (1) that the publications were absolutely privileged under California law; and (2) that by failing to allege demand for retraction of the purported libel or to describe damage to appellant's business or profession, the complaint failed to comply with § 48a Civil Code, the California retraction statute.

After hearing the trial court entered its judgment sustaining the demurrer "on the ground that the complaint does not allege special damages or demand for retraction pursuant to Sec. 48a of the Civil Code and the Plaintiff having stated that he could not amend to meet that objection, leave to amend was denied and all other grounds of demurrer were ordered off calendar".[1]

Judgment was affirmed in the California District Court of Appeal at 108 Advance California Appellate Reports 634, 238 Pac. (2d) 1018. Petition for Hearing in the Supreme Court of California was denied at 38 Advance California Reports No. 18, at page 1 of Minutes. Appellant now attempts this appeal from the judgment of the District Court of Appeal under 28 U. S. C. A., 1257, subdivision 2.

II. Statute Involved

Appellant contends in his Jurisdictional Statement that § 48a Civil Code of the State of California is invalid. That Act has been set forth at length in appellant's Statement and therefore will not be repeated here.

---

[1] It is appellee's position that even were appellant's objections to Civil Code 48a valid his complaint is fatally defective under other provisions of California law.

III. Grounds for Denying Jurisdiction

In urging jurisdiction upon this Court the appellant states that Civil Code Section 48a is unconstitutional because it deprives him of property without due process. There is no legal foundation supporting this position.

A brief analysis of that statute demonstrates that its provisions are not as startling as represented in the argument supporting jurisdiction. The law has a two-fold effect. One is the creation of a remedy for the benefit of the person defamed which did not exist at common law, namely, the right to demand a retraction. This demand is also a condition precedent to maintaining an action for general damages. If the request for retraction is ignored the person claiming injury may then seek general damages. In the event that a retraction is published he is entitled to recover (assuming a libel has occurred) such damages as may have been "suffered in respect to his property, business, trade, profession or occupation . . ." (Civil Code § 48a 4(b)).

Appellant asserts that the statute assailed permits the taking of his reputation, which is claimed to be a species of property.

It is unnecessary to point out to this Court that appellant's own labelling of the issue does not determine the existence of a Feedral question. The enactment attacked was law long before the statement complained of was published. Stripped of irrelevant legal verbiage, it is evident that this appeal is based upon the premise that Civil Code § 48a is invalid because it modifies the common-law remedy for injury to reputation. Simply put appellant urges that he has an indestructible property right to claim all damages known to common law for redress of libel. It will be demonstrated that this is a fallacy.

If this constitutional issue had never been before the court, a review of appellant's contention might be justifiable.

The fact is that on a number of occasions the court has rejected the same erroneous conception as advanced in this case. In *Silver* v. *Silver*, 280 U. S. 117, the appellant there asserted that the so-called guest statute of Connecticut was unconstitutional because it destroyed her common-law right as a passenger in a motor vehicle to recover damages for injuries resulting from its negligent operation. In delivering the opinion of the majority affirming the constitutionalty of the act, Mr. Justice Stone stated (p. 122):

> "We need not, therefore, elaborate the rule that the Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to obtain a permissible legislative object (citing cases)."

Objections the same in principle have been advanced to the constitutionality of various Workmen's Compensation laws and statutes destroying right of action for criminal conversation, alienation of affections and breach of promise. See:

Northern Pacific Ry. Co. v. *Meese*, 239 U. S. 614;
Fearon v. *Treanor*, 301 U. S. 667;
Hanfgarn v. *Mark*, 302 U. S. 641.

Reason as well as authority dictates that the principles of legal redress must be subject to modification. If the Constitution proscribes the action taken by the legislature of California in altering the remedy existing at common law, then it inevitably follows that there can be no innovation to meet the demand of changed circumstance. Such a construction would transform our legal rules into an ossified set of immutable principles—jural rights and remedies would be forever circumscribed and limited by the composite dead hand of the creators of the Anglo-Saxon legal system.

1. *The Objective of the Legislature Is Proper*

The legislature of the State of California sought a permissible and proper legal objective in enacting Civil Code § 48a. As pointed out by Dean Prosser (*Prosser on Torts*, p. 778) the action for defamation developed without any particular aim or plan. The perplexing confusion resulting has long been the subject of profound criticism by distinguished commentators. The principles defining the wrong and its remedies resulted from trial and error experiment of the miscellaneous courts of England having jurisdiction from time to time over the subject matter of libel and slander. The precedent so created is entitled to respect —but no veil of sanctity forbids scrutiny of the premise upon which those rules are based. The legislature of California has examined the legal structure and found it wanting. Thus Civil Code § 48a was enacted to effect an important concept of local policy.

Many reasons justifying the promulgation of this statute are evident. The Supreme Court of the State of California in *Werner* v. *Southern California Associated Newspapers*, 35 Cal. (2d) 121, 216 Pac. (2d) 825, well states two of them (35 Cal. (2d) 128):

> "In view of the conflicting rules of liability presented by the law of defamation itself and the recognition in other situations that the Legislature may abolish causes of action to prevent unfounded litigation, we cannot say that the Legislature could not reasonably conclude that the danger of excessive recoveries of general damages in libel actions justified limitation of recovery to special damages when a retraction has not been demanded and refused.
>
> Nor can we take exception to the second basis upon which the Legislature could justify its limitation of

recovery to special damages, namely, the public interest in the free dissemination of news. In view of the complex and far-flung activities of news services upon which newspapers and radio stations must largely rely and the necessity of publishing news while it is new, newspapers and radio stations may in good faith publicize items that are untrue but whose falsity they have neither the time nor the opportunity to ascertain. The Legislature may reasonably conclude that the public interest in the dissemination of news outweighs the possible injury to a plaintiff from the publication of a libel, and may properly encourage and protect news dissemination by relieving newspapers and radio stations from all but special damages resulting from defamation, upon the publication of a retraction."

California is not alone in restricting damages for defamation when retraction is provided for. *Minnesota Statutes Annotated*, § 548.06 and *Florida Statutes Annotated*, § 770.02, are similar in objective to § 48a. Both laws limit damages where a retraction is printed and further make a distinction between publication of libel by a newspaper and libel published by other means. When these two statutes were attacked on grounds similar to those advanced by the appellant here the highest courts of both states held that it was for the legislature to choose between the conflicting policies advanced in favor of and against the enactments.

See:

Allen v. *Pioneer Press*, 40 Minn. 117, 41 N. W. 936;
Ross v. *Gore*, — Fla. —, 48 Sou. (2d) 412.[2]

2. *The Classification Is Reasonable*

Because of the peculiar nature of the newspaper business and the practical necessities placed upon it by demand of

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[2] See also: Arthur & Crossman "The Law of Newspapers" (p. 500-570) and Angoff "Handbook of Libel" for reference to various retraction statutes of 20 states.

the public, the legislature of California was fully justified and reasonable in making the classification created by Civil Code § 48a. The comments of the Supreme Court of that State in *Werner* v. *Southern California Associated Newspapers*, quoted *supra*, indicate clearly the propriety of such action. This Court has often stated that a classification will be sustained as valid unless totally lacking in any reasonable basis. Such is not the case here.

Bordens Farm Products Co. v. *Baldwin*, 293 U. S. 194;
Clark v. *Paul Gray, Inc.*, 306 U. S. 583;
Railway Express Agency v. *New York*, 336 U. S. 106.

Summary

An objective appraisal of appellant's position makes it clear that he complains of the *wisdom* of the statute attacked. It is neither justified nor proper to ask this Court to substitute its judgment for that of the legislature of California.

It is respectfully submitted that the judgment below should be summarily affirmed or the appeal dismissed.

Respectfully submitted,

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No. 8[redacted] 96

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IN THE

SUPREME COURT

OF THE

United States of America

JAMES MONROE JEFFERSON,
Plaintiff and Appellant,
vs.
CHRONICLE PUBLISHING COMPANY, a California Corporation,
Defendant and Respondent.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM APPEAL

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TOPICAL INDEX

Page

Right to Demand a Retraction Is Not an Adequate Remedy 3

The Classification of Newspapers for the Purpose of Retraction Is Improper 4

Conclusion 5

TABLE OF CASES AND AUTHORITIES CITED

Cases

Atchison, T. & S. F. vs. Matthews, 174 U. S. 96, 19 S. Ct. 609 5

Oyama vs. State of California, 332 U. S. 633, 68 S. Ct. 269, 92 L. Ed. 249 3

Werner vs. South California Newspapers, 35 Cal. 2d 121, 216 P. 2d 825 ..... 1, 2

Code

California Civil Code, Sec. 48A 3

IN THE

SUPREME COURT

OF THE

United States of America

JAMES MONROE JEFFERSON,
Plaintiff and Appellant,
vs.
CHRONICLE PUBLISHING COMPANY, a California Corporation,
Defendant and Respondent.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM APPEAL

Respondent argues two points in support of its motion to dismiss or affirm the appeal; that is, first, the right of appellant to demand a retraction as a good, sufficient and valid substitution for the right to sue for and recover general damages for libel; second, it is proper to put newspapers in a class by themselves and give them privileges and immunities which are not granted to persons who publish a libel through some other medium.

In support of each of said points, respondent cites the case of *Werner vs. South California Newspapers,*

35 Cal. 2d 121, 216 P 2d 825. However, it should be noted that this Honorable Court accepted an appeal from the decision of the California Supreme Court in that case, (71 S. Ct. 81) but before decision was rendered, the appeal was dismissed by appellant (71 S. Ct. 290). Furthermore, the decision of the California Supreme Court was by a divided court, two justices dissenting. The same two justices dissented in this case, as will appear in the record, and expressed the opinion that the question should be reconsidered.

In considering the facts, it must not be overlooked that the libel in this case was knowingly, falsely and maliciously published for the purpose of injuring the plaintiff.

RIGHT TO DEMAND A RETRACTION IS NOT AN ADEQUATE REMEDY.

Under common law and under California law, a person libelled is entitled to recover general damages. Sec. 48A of the California Civil Code, according to respondent, established a new remedy for libel published in a newspaper by giving the person libelled the responsibility of demanding a retraction. The old remedy of a suit for damages is not only denied, but a responsibility to be exercised within 20 days is placed upon the injured person. If he fails to act on that responsibility, he is denied all rights to any general damages whatsoever, however much the libel might have injured him and even though it was knowingly, falsely and wantonly published for the purpose of injuring him.

Appellant is thus deprived of his property without due process of law, for certainly his right to damages is a property right, and it is taken from him and instead he is given a burden. And the performance of the burden does not result in securing for him the property to which he is entitled because of the wrongful injury. It is only another step to make it impossible for him to recover such property, that is, damages for the injury suffered. As stated by this Court, "He is saddled with the onerous burden of proof which need not be borne by Californians generally". *Oyama vs. State of California,* 332 U. S. 633, 68 S. Ct. 269, 92 L. Ed. 249.

THE CLASSIFICATION OF NEWSPAPERS FOR THE PURPOSE OF RETRACTION IS IMPROPER.

If it is assumed for the sake of argument that retraction is a good, sufficient remedy for libel, there is no justification for limiting its application to newspapers and denying it to libellants who publish the libel in some other manner. The value of a retraction is that the person who read the libel will have the mistake corrected. This is only effective if each person who read the libel will thereafter read the retraction and be convinced that the original falsehood was incorrect and untrue. Newspapers are read by great numbers of people, and of all the many thousands reading a libel, there may be many, in fact possibly the majority of them, who will not read or even see the retraction. Furthermore, the attention-attracting elements of the libelous story will not be present in the retraction story, thereby causing it to be ignored by the same persons who were attracted to and read the libelous story. The retraction is, therefore, ineffective.

On the other hand, a libel published in a letter addressed to a specific person could be very effectively retracted by a letter addressed to the same person. Nevertheless, California law does not grant the retraction privileges to the person who publishes a libel in that manner and a person libelled by a letter may recover general damages. The law does not, therefore, give the same protection to persons libelled by a newspaper that it gives to persons libelled by a letter or any means of publication other than a newspaper. This

is an invalid classification. *Atchison, T. & S. F. vs. Matthews,* 174 U. S. 96, 19 S. Ct. 609.

CONCLUSION

The rights which appellant is attempting to protect in this case are those guaranteed by the Constitution of the United States and a decision of this Court is necessary to establish such rights and give this appellant the protection to which he is entitled.

As pointed out in the Jurisdictional Statement, the question is not only of paramount importance to newspapers and the public generally in the entire United States, but the question is unsettled at the present time and it should be answered by this Court.

Respectfully submitted,

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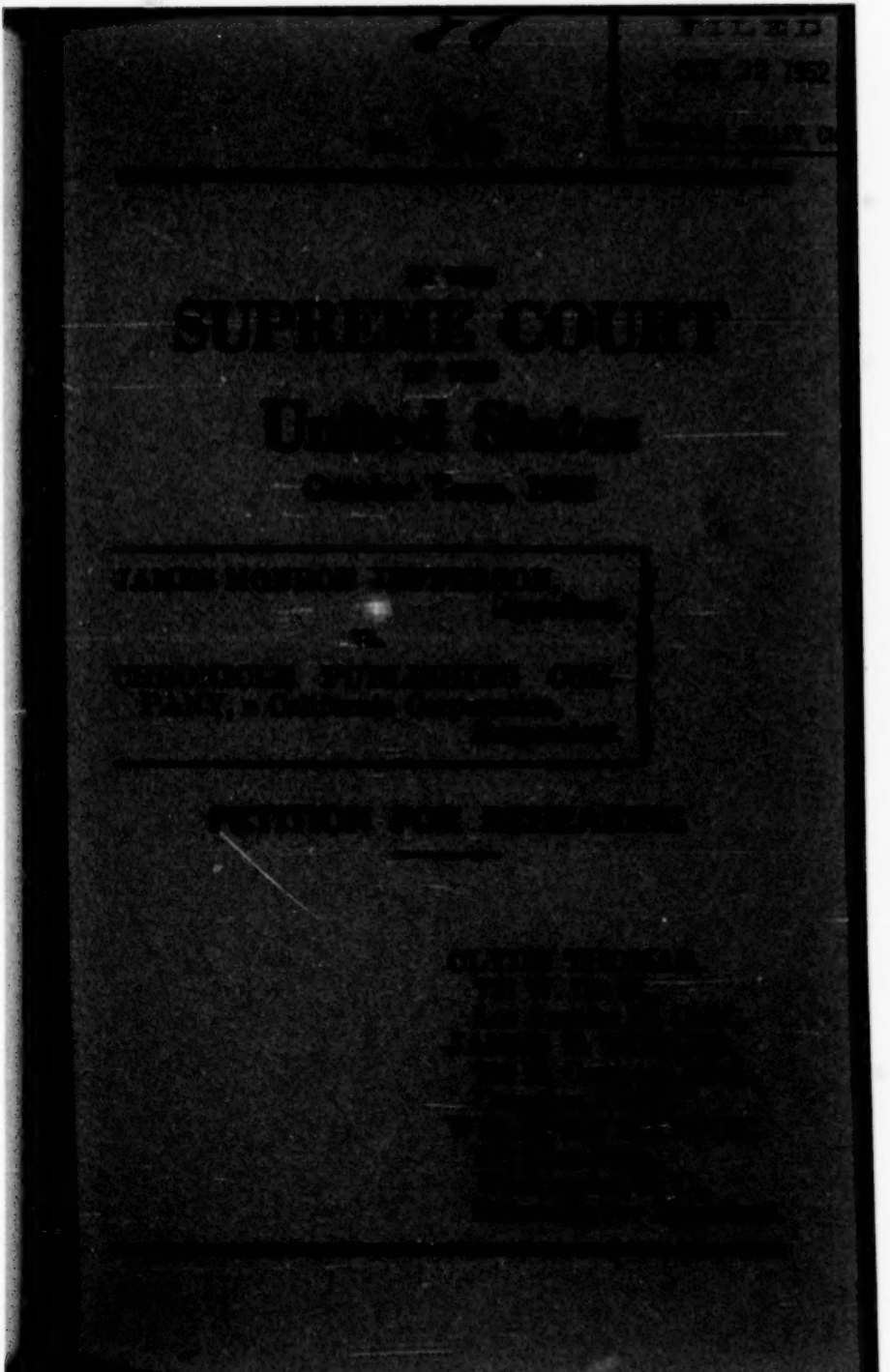

TOPICAL INDEX

Page

1. The present case presents a clear-cut issue on whether a self executing retraction statute is unconstitutional under the 14th Amendment, or whether the victim of a newspaper libel is entitled to a day in court. This question is of great public interest to all the newspapers in California and to all persons who might be libeled in a newspaper. Many other states have passed similar laws and there has been much litigation of their validity 2
2. The privilege and immunity granted to a newspaper results in a denial of equal protection of the la wto appellant, contrary to and forbidden by the 14th Amendment to the Constitution of the United States 7
3. Reputation is property with an actual monetary value as well as personal satisfaction. It is entitled to the full legal protection given to life, liberty and property under the United States Constitution. The immunity and privilege granted it by the California law licenses a newspaper to deprive one of his reputation without due process of law 10
4. Sec. 48a does not abolish the cause of action for the tort of libel and does not substitute a new process of law for ssecuring compensation for

Page

such an actionable wrong. It recognizes the tort and merely prevents the collection of damages if the specific tort is perpetrated in a certain manner, that is, published in a newspaper 13

5. The publishing of a correction of the libel story after demand by the victim is not due process of law and does not compensate the victim for his injuries or damages resulting from a libel 15

Conclusion 18

TABLE OF CASES AND AUTHORITIES CITED

Cases

Allen v. Pioneer-Press Co., 40 Minn. 117, 41 N. E. 936, 3 L. R. A. 532 5

Atchison, T. & S. F. R. R. Co. v. Matthews (174 U. S. 96) 9

Byers v. Meridian Printing Co., 84 Ohio St. 408, 95 N. E. 917, 38 L. R. A., N. S. 913 (1911) 4

Ellis v. Brockton Publishing Co., 198 Mass. 538, 84 N. E. 1018, 126 Am. St. Rep. 454 4

Hanson v. Krehbiel, 68 Kan. 670, 75 Pac. 1041, 64 L. R. A. 790 4

Hotchkiss v. Porter, 30 Conn. 414 (1862) 4

Lindsey v. Evening Journal Assoc., 10 N. J. Misc. 1275, 163 Atl. 542 (1932) 4

McGee v. Baumgartner, 121 Mich. 287, 80 N. W. 21 4

Melvin v. Reid, 112 Cal. App. 285, 291 11

Page

Meyerle v. Pioneer Publishing Co., 45 N. D. 568, 178 N. W. 792 (1920) 4, 11

Moore v. Stevenson, 27 Conn. 14 (1858) 4

Neafie v. Roboken Printing & Publishing Co., 75 N. J. L. 564, 68 Atl. 146 (1907) 4

Osborn v. Leach, 135 N. C. 447, 47 S. E. 811, 66 L. R. A. 648 ..... 4, 10, 11

Oyama v. State of California (332 U. S. 633) 9

Park v. Detroit Free Press, 72 Mich. 560, 40 N. W. 731, 1 L. R. A. 599, 16 Am. St. Rep. 544 (1888) 4, 9, 11

Pentuff v. Park, 194 N. C. 146, 138 S. E. 616, 53 A. L. R. 626, later app. 195 N. C. 609, 143 S. E. 139 (1927) 4

Post Publishing Co. v. Butler, 137 Fed. 723 (C.C.A. 6th, 1905) 4

Reid v. Nichols, 166 Ky. 423, 179 S. W. 440 (1915) 3, 4

Takahashi v. Fish and Game Commission (334 U. S. 410) 9

Werner v. Southern California Associated Newspapers, (35 Cal. (2) 121; 216 Pac. (2) 825) 2, 5, 6, 16

Yick Wo v. Hopkins (118 U. S. 373) 9

Codes, Textbooks, Constitutions, etc.

California Civil Code

Section 43 13

Section 43.5 13

Section 48a 2, 5, 7

Page

California Constitution
Art. I, Sec. 1 11
Art. I, Sec. 9 13
Morris, Inadvertent Newspaper Libel & Retraction, 32 Ill. L. Rev. 32, 43 (1937) 6

IN THE

SUPREME COURT

OF THE

United States

October Term, 1952

JAMES MONROE JEFFERSON, *Appellant,* vs. CHRONICLE PUBLISHING COMPANY, a California Corporation, *Respondent.*	No. 96

PETITION FOR REHEARING

The the Honorable, The Supreme Court of the United States of America:

Comes now the appellant and petitions for rehearing of the order granting motion to dismiss and dismissing appeal in the above entitled cause, and as grounds for rehearing says:

It is respectfully submitted that there is and has been at all stages but one question before and decided by the California courts, and that it is a substantial federal question for the reasons that,

1. The present case presents a clear-cut issue on whether a self executing retraction statute is unconstitutional under the 14th Amendment, or whether the victim of a newspaper libel is entitled to a day in court. This question is of great public interest to all the newspapers in California and to all persons who might be libeled in a newspaper. Many other states have passed similar laws and there has been much litigation of their validity.

In this case appellant was denied relief because he failed to comply with section 48a of the California Civil Code, which he claimed to be invalid as being in violation of the 14th Amendment to the United States Constitution. The statute was sustained by the trial court and by the District Court of Appeals on the ground that the California Supreme Court had held the statute not in conflict with the 14th Amendment in the case of *Werner v. Southern California Associated Newspapers,* (35 Cal. (2) 121; 216 Pac. (2) 825.)

The validity of Sec. 48a is the only issue presented at any stage of the proceedings and is the only issue decided by the California courts in this case; holding that Sec. 48a does not violate the 14th Amendment. The result is to deny appellant a day in court to present his case against the newspaper.

Sec. 48a of the California Civil Code provides that no one shall recover more than special damages for libel published in a newspaper unless a correction be demanded and not published. Special damages are

defined as that suffered in respect to property, business, trade, profession or occupation, including money expended as the result of the libel and no other, thus eliminating all general damages resulting from the loss of reputation. This is of utmost importance to all newspapers in California, the practical effect being to eliminate libel actions against newspapers in that state and, in effect, license them to wilfully and purposefully assassinate character and reputation without fear of cost or expense. It is also of extreme importance to anyone about whom a libelous story might be published in a newspaper.

The statute makes no condition as to the good faith, belief, honest mistake or other circumstances which might explain the publication of a libel. It applies not only to firstclass newspaper run with every effort to print only the truth but, to the same extent, to any yellow journal newspaper or any other newspaper that might deliberately and maliciously and knowingly and wantonly libel anyone. In the case now before the court the libel is alleged to be knowingly false and malicious and to have been published through ill will and malice.

Many other states have attempted to change the basic libel laws by providing protection for newspapers if a retraction was published, but in most cases the laws have been held void as contrary to federal and state constitutions. Even when the laws were not held invalid, the statutes were often judicially rewritten so as to allow general damages. (*Reid v. Nichols,* 166 Ky.

423, 179 S. W. 440 (1915); *Ellis v. Brockton Publishing Co.*, 198 Mass. 538, 84 N. E. 1018, 126 Am. St. Rep. 454, 15 Ann. Cas. 83 (1908); *Neafie v. Hoboken Printing & Publishing Co.*, 75 N. J. L. 564, 68 Atl. 146 (1907); *Lindsey v. Evening Journal Assoc.*, 10 N. J. Misc. 1275, 163 Atl. 245 (1932; *Osborn v. Leach*, 135 N. C. 447, 47 S. E. 811, 66 L. R. A. 648 (1904); *Pentuff v. Park*, 194 N. C. 146, 138 S. E. 616, 53 A. L. R. 626, later app. 195 N. C. 609, 143 S. E. 139 (1927); *Meyerle v. Pioneer Publishing Co.*, 45 N. D. 568, 178 N. W. 792 (1920).) Some of the above courts and others have indicated by strong dictum that they would declare unconstitutional any statute attempting to substitute a retraction for general damages. (*Moore v. Stevenson*, 27 Conn. 14 (1858); *Hotnhkiss v. Porter*, 30 Conn. 414 (1862); *Neafie v. Hoboken Printing & Publishing Co., supra; Osborn v. Leach, supra; Meyerle v. Pioneer Publishing Co., supra; Post Publishing Co. v. Butler*, 137 Fed. 723 (C. C. A. 6th, 1905).) Where the intention to eliminate general damages was clear, the following courts had no difficulty in declaring the law unconstitutional. (*Hanson v. Krehbiel*, 68 Kan. 670, 75 Pac. 1041, 64 L. R. A. 790, 104 Am. St. Rep. 422 (1904); *Park v. Detroit Free Press*, 72 Mich. 560, 40 N. W. 731, 1 L. R. A. 599, 16 Am. St. Rep. 544 (1888), approved in *McGee v. Baumgartner*, 121 Mich. 287, 80 N. W. 21 (1899); *Beyers v. Meridian Printing Co.*, 84 Ohio St. 408, 95 N. E. 917, 38 L. R. A., N. S. 913 (1911).)

It will be noted that in none of the foregoing cases did the retraction statute purport to go as far as Sec. 48a of the California Civil Code and apply to everyone without regard to the wilfullness or maliciousness of the publication. The statutes there considered only attempted to give immunity to the publisher for his retraction when it was shown that the publication was in good faith.

Only two states, California and Minnesota, have upheld retraction statutes, the California court in the *Werner* case to which reference is made above.

The Minnesota statute was declared valid by a divided court in *Allen v. Pioneer-Press Co.*, 40 Minn. 117, 41 N. E. 936, 3 L. R. A. 532, 12 Am. St. Rep. 707 (1889). It must be noted that the plaintiff, by virtue of the statute, could still recover general damages, even if the retraction were published, unless the defendant could show that the libelous publication was made in good faith and under a mistake as to the facts. As to the view of the Minnesota Court it has been said:

> " . . . but they confine the scope of the operation of the statute almost to extinction by holding that the sttaute applies only to cases in which the defendant is not negligent. Since practically all inadvertent libels are at least tinctured by the color of negligence, cases are likely to be submitted to a jury with an instruction that they may find general damages if they find negligence; and the result usually expected . . . is a general damage verdict." (*Morris, Inadvertent Newspa-*

per Libel and Retraction, 32 Ill. L. Rev. 32, 43 (1937).)

It is thus seen that the *Minnesota* case is in no way within the type of law contained in Sec. 48a of the California Civil Code and that, therefore, the decision of the California Supreme Court in the *Werner* case stands alone against the weight of authority in the United States. Although this court noted probable jurisdiction of an appeal of the *Werner* case from the California Supreme Court, the matter was settled before argument and the appeal dismissed. The same issue is now presented to the court in this case and is of paramount importance not only to this appellant but to every newspaper publisher in the United States, particularly newspapers of good repute who do their utmost not to publish any unfair articles, while unscrupulous newspapers for the sake of increasing circulation and sales, will be protected in printing scurrilous defamatory stories about persons in high places.

The question is likewise of the utmost importance to every individual who is or might be libeled, as well as to this appellant. He has been denied a day in court, not only to secure damages for the injury to his reputation, but to protect the reputation itself. The special damage provision is so limited that recovery thereunder would tend to belittle rather than vindicate his good name. (See beginning of Justice Carter's dissent in the *Werner* case, *supra*.)

This court should clarify the constitutional principles applicable to retraction laws.

2. The privilege and immunity granted to a newspaper results in a denial of equal protection of the law to appellant, contrary to and forbidden by the 14th Amendment to the Constitution of the United States.

One constant factor in the consideration of the 14th Amendment as applied to the protection of an individual is that a law shall not grant privileges or immunities nor cast burdens and liabilities upon one person which are not granted to or cast upon others similarly situated. Sec. 48a of the California Civil Code violates that principle in two respects, *first,* as to the privilege granted to a newspaper but denied to other publishers; and, *second,* the denial of protection to a person libeled in a newspaper even though the protection is extended to persons libeled in any other manner.

In the *first* instance a newspaper may deliberately and maliciously publish a knowingly scurrilous libel, and the law says it does not have to pay any damages to the person whose reputation is ruined even though the libel was published deliberately for the purpose of ruining his reputation. The publisher has no responsibility for general damages, whatsoever, unless and until the person whose reputation has been ruined shall demand within 20 days that a correction be printed, and then the only liability of the newspaper is to publish a correction within three weeks thereafter.

On the other hand, if a magazine should copy the article, or even publish a digest of it, the magazine

would be subject to a lawsuit for general damages because of the injury to the reputation of the person libeled. There is no dissimilarity between a newspaper and a magazine to justify the granting of such privilege and immunity to the one for its wilful and wanton acts, while holding the other responsible for its acts even though the publication was not knowingly and wilfully done.

In the *second* case the person libeled is the victim of the improper privilege and immunity granted to the newspaper. One who is so libeled is denied a day in court to show the general damages suffered as a result of the wilful and malicious lie. Instead, he has the responsibility of demanding a retraction. If the demand is not made he has no protection whatsoever. If he makes the demand the newspaper must publish a correction within three weeks. If the correction is published he cannot secure compensation for the injury suffered, and he cannot go to court to test whether the correction was effective to overcome the libel and to prevent its repetition.

On the other hand, a person libeled in a magazine can go into court, show his damages to his reputation and collect for his injuries. Even an innocent mistake on the part of the magazine publisher would not be a defense but could only be shown in mitigation of damages.

The California law clearly discriminates against appellant merely because the tort by which he was injured was published in a newspaper. He is saddled

with the onerous burden of demanding a retraction and accepting its publication in full satisfaction of all damages and injuries he might have suffered to his reputation without regard to the actual facts. Anyone libeled in any other manner is not so burdened but has the full authority of the law and a day in court to secure adequate and just compensation. In short, this appellant lost the right to protect his reputation irretrievably and without compensation solely because of the extraordinary protection which the law gives the newspaper publisher. This paragraph is a free paraphrasing of the language of this court in the case of *Oyama v. State of California,* (332 U. S. 633). See also *Takahashi v. Fish and Game Commission* (334 U. S. 410); *Atchison, T. & S. F. R. R. Co. v. Matthews* (174 U. S. 96); *Yick Wo v. Hopkins* (118 U. S. 373).

As was stated in *Park v. Detroit Free Press Co.,* 72 Mich. 560, 567, 40 N. W. 731, 734, 1 L. R. A. 599, 602, 16 Am. St. Rep. 544, 549 (1888), wherein the Supreme Court of Michigan declared void a statute which denied general damages upon retraction by newspapers who published libel in good faith:

> "It is not competent for the Legislature to give one class of citizens legal exemptions from liability for wrongs not granted to others; and it is not competent to authorize any person, natural or artificial to do wrong to others without answering fully for the wrong. . . . "

The theory of the *Park* case that such retraction legislation is class legislation and, therefore, void as a denial

of equal protection of the law received approval in the concurring opinion in *Osborn v. Leach*, 135 N. C. 447, 457, 47 S. E. 811, 815, 66 L. R. A. 648, 652 (1904). Mr. Justice Douglas there said:

> " . . . I feel constrained to say that, in my opinion, the so-called libel act is unconstitutional, inasmuch as it discriminates between the editor of a newspaper and the ordinary citizens. If I write a letter libeling an editor, that perhaps, at most, 10 people may see, I am subject to pains and penalties from which he is exempted by operation of the statute. Whatever other merits the act may have, I do not think that such discrimination can be sustained under the explicit provision of our Constitution. . . . "

3. Reputation is property with an actual monetary value as well as personal satisfaction. It is entitled to the full legal protection given to life, liberty and property under the United States Constitution. The immunity and privilege granted it by the California law licenses a newspaper to deprive one of his reputation without due process of law.

One's reputation is an intangible asset. It is not a merchantable product in the ordinary sense, nevertheless, its value to an individual is more important to him than tangible property and is the difference between failure and success. With a good reputation one can accomplish things and go places within the limits of his own ability. If he has a bad reputation he can do neither in spite of unbounded abilities and capacities.

Damage to reputation is a valuable property right which has long been recognized in the law of defamation. (California Constitution, Art. I, Sec. 1; *Melvin v. Reid,* 112 Cal. App. 285, 291; *Osborn v. Leach,* 135 N. C. 447, 451, 47 S. E. 811, 813, 66 L. R. A. 648, 651 (1904); *Meyerle v. Pioneer Publishing Co.,* 45 N. D. 568, 574, 178 N. W. 792, 794 (1920), and the many authorities cited therein.) In *Park v. Detroit Free Press,* 72 Mich. 560, 566, 40 N. W. 731, 733, 1 L. R. A. 599, 601, 16 Am. St. Rep. 544, 548 (1888), the Court said:

> "There is no room for holding in a constitutional system that private reputation is any more subject to be removed by statute from full legal protection than life, liberty, or property. It is one of those rights necessary to human society that underlie the whole social scheme of civilization. It is a thing which is more easily injured than restored, and where injury is capable of infinite mischief. . . . "

The inherent intangible nature of reputation means that its value, or the injury to it by a wilful and malicious libel, can only be measured in terms of general damages. Special damages, as defined by the California law, have no commensurate relation to the damage caused by injury to the reputation.

The theory of Section 48a seems to be that if the injured person demands a correction of the libel within 20 days and the newspaper publishes a correction within three weeks after the service of the demand, that then the injured party is restored completely for all damage to his reputation and that no injury has been

suffered by him for which he should be compensated. This conclusion is unsupported by fact or common sense. It is common and general knowledge that newspapers are so widely distributed, read by so many people, and oftentimes sketchily and spasmodically read, that it would be the normal usual event for many persons reading the libel to fail to see the correction. The reader of the correction is much more likely to be impressed by the spectacular lie than he is by the correction. The reader may recognize that the newspaper published the correction to prevent and defeat a lawsuit, and he might conclude that it was published for that purpose without regard to the facts in the original story.

The ultimate result of Sec. 48a is to license a newspaper to freely libel anyone and thereby deprive him of his reputation, that is his rights and property, without due process of law. Even though a deliberate, wilful and malicious lie is published in the newspaper for the purpose of running the victims' reputation, he is nevertheless denied a day in court to secure general damages with the resulting vindication.

4. Sec. 48a does not abolish the cause of action for the tort of libel and does not substitute a new process of law for securing compensation for such an actionable wrong. It recognizes the tort and merely prevents the collection of damages if the specific tort is perpetrated in a certain manner, that is, published in a newspaper.

California law recognizes libel as an actionable tort both in its constitution and its statutes. The California Constitution provides that "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right." (Cal. Constitution, Art. I, Sec. 9.) This broad basic provision is made specific in the California Civil Code, Sec. 43, which provides that " . . . every person has . . . the right of protection from restraint or harm, from personal insult, from defamation, . . . "

The California Civil Code next provides in Sec. 43.5 that "No cause of action arises for:

a) alienation of affection
b) criminal conversation
c) seduction of a person over the age of legal consent
d) breach of promise of marriage."

It also provides in the next section, 43.5a, that there shall be no cause of action for arrest pursuant to warrant regular on its face.

At no time is libel, however published, declared to be a tort for which no cause of action shall arise. The question now before the court is not the right of California to abolish the tort of libel and thereby deprive appellant of a cause of action. The point to be decided is the right of California to deny damages to one who has been injured by a tort of libel merely because of the medium by which the libel was published.

The California law thus provides that anyone libeled in California has a cause of action by which he may sue and recover all damages, including general damages. It then gives special treatment to a libel which is published in a newspaper, the most potent, far-reaching, effective and readily accessible of all publications, and declares that if the libel is published in such medium the victim of the libel shall be denied any rights to general damages, no matter if the very publication was itself designed and intended to ruin the reputation of the victim. Clearly, the cases in which a tort was abolished, the cases in which a different legal process was provided for determining damages, such as the industrial compensation laws, are not pertinent to the law now being considered.

5. The publishing of a correction of the libel story after demand by the victim is not due process of law and does not compensate the victim for his injuries or damages resulting from a libel.

The California law absolutely frees a newspaper publishing libelant from any liability for general damages unless he refuses to publish a correction after demand by the victim. If such demand is not made, as was the case now before this court, the victim is without any recourse whatever and the tort feasor is free from any liability for general damages to the victim, even though his reputation is completely ruined with all the consequential injury to his business or profession. This result comes about from the law itself and not from any judicial or other process of law.

If the victim does make the demand for correction within 20 days and the correction is published within three weeks, the book is closed with no further recourse by any process of law for the victim to secure compensation for his loss of reputation or other general damages that he might have suffered. The results are brought about entirely by the parties with no process of law for determining the sufficiency of the correction to restore the victim's good name to him for the harm done by the wrongful act. There is no judicial or other process of law to which the victim can go for adjustment of his rights or to secure any compensations for the injuries suffered as result of the malicious, deliberate and intentional assassination of his character in a newspaper.

The effect of this law is to license newspapers to deliberately assassinate character and reputation of another person. It even protects assassination of character by the "big lie" and the repetition thereof. The "big lie" not only attracts attention but, by repetition, comes to be accepted as truth even though obviously false on its face to ordinary thinking people. The California law creates a great haven for the perpetration of the "big lie" in newspapers. The "big lie" can be published again and again, and each time a correction is demanded, a correction can be printed. The repeated publication of the corrections as well as the "big lie" itself would further spread the vicious results, and the victim left without any recourse against such deliberate action.

That this is the effect of the California law is made clear in the dissenting opinion of Justice Schauer in the case of *Werner v. Southern California Associated Newspapers* cited above, in which he says:

> "I reiterate that it is only in respect to the licensing, in effect, of deliberately false and malicious publications that this dissent is directed. I cannot think that the great body of reputable newspapers and radio broadcasting companies which serve our country and our people so well would ever stoop to the vicious practices which the statute would permit. But there is nothing to prevent vicious persons from entering the publishing business and from taking full advantage of the law as it is upheld. The reputable publishers themselves may in the long run suffer more

from the nefarious practices which the law permits and which it encourages than they would from defending a few libel actions against the unfounded charge of falsity and malice. Since the majority opinion affirms the judgment on the theory that section 48a is valid in its every element and application I do not discuss whether what I believe to be the invalid portions or applications of the statute could be deleted and the remainder upheld. Likewise, for the purposes of this dissent, I accept the implications of the majority that affirmance of the judgment depends on sustaining the statute in its entirety."

The victim of a libel published in a newspaper is also without day in court vindication of his reputation. While the law allows him to sue for special damages, such damages do not involve his reputation or character and are so limited in provable loss that a judgment for only a nominal amount could be secured. The amount recoverable is woefully disproportionate to the actual damage suffered by one whose reputation has been injured. The result of such a lawsuit and such a judgment would make it appear to the public that the victim had no reputation of any appreciable value, for the public would not distinguish the limitations placed on him by this law. Sec. 48a deprives the victim of a day in court for vindication of his reputation and his good name.

CONCLUSION

A rehearing should be granted as a substantial federal question as presented to the court on this appeal; it is of great public interest to newspapers and to persons who might be the victim of a libel published in a newspaper; appellant and all other persons who are libeled in a newspaper have been deprived of a day in court for the purpose of vindicating their good name and securing compensation for injury thereto; and this court should take jurisdiction for the purpose of determining that the retraction law adopted by California is in violation of the Federal Constitution and therefore void.

Such an encroachment on his rights is eroding the Constitution and the doctrine *principiis obsta* must prevail. We can think of no more appropriate place and time to block the evil of constitutional erosion at its beginning than here.

Granting the respondent's motion to dismiss has closed the door to all individuals to raise this question ever again.

Dated, Los Angeles, California, October ....., 1952.

Respectfully submitted,

CLYDE THOMAS,
JAMES G. BUTLER,
WELBURN MAYOCK,
Attorneys for Appellant.

No. 96. JEFFERSON *v.* CHRONICLE PUBLISHING CO. Appeal from the District Court of Appeal of California, Second Appellate District. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. MR. JUSTICE BLACK dissents. MR. JUSTICE BURTON is of the opinion that probable jurisdiction should be noted. *Welburn Mayock* for appellant. *Oscar Lawler* and *John M. Hall* for appellee. Reported below: 108 Cal. App. 2d 538, 238 P. 2d 1018.